



BILLING CODE 6820-61

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 517, 538, and 552

**[GSAR Case 2020-G509; Docket No. GSA-GSAR 2021-0015;
Sequence No. 1]**

RIN 3090-AK19

**General Services Administration Acquisition Regulation
(GSAR); Extending Federal Supply Schedule Orders Beyond the
Contract Term**

AGENCY: Office of Acquisition Policy, General Services
Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services
Administration Acquisition Regulation (GSAR) to incorporate
existing internal Federal Supply Schedule (FSS) policy
concerning the option to extend the term of the contract
and performance of orders beyond the term of the base FSS
contract.

DATES: Interested parties should submit written comments to
the Regulatory Secretariat Division at the address shown
below on or before **[INSERT DATE 60 DAYS AFTER DATE OF
PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the
formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2020-G509 to: Regulations.gov: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "GSAR Case 2020-G509". Select the link "Comment Now" that corresponds with GSAR Case 2020-G509. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2020-G509" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite GSAR Case 2020-G509 in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov> approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, at gsarpolicy@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat Division at 202-501-4755 or *GSARRegSec@gsa.gov*.

Please cite GSAR Case 2020-G509.

SUPPLEMENTARY INFORMATION:

I. Background

As a part of GSA's comprehensive review of the regulatory requirements in the GSAR, GSA identified supplemental internal GSA policy related to the FSS program that should be placed within the GSAR. Specifically, GSA is seeking to incorporate into the GSAR FSS clause I-FSS-163, Option to Extend the Term of the Contract (Evergreen), and FSS policy concerning standard fill-in information for paragraph (d) of FAR clause 52.216-22, Indefinite Quantity.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

GSA is amending the GSAR to revise subpart 517.2 for purposes of clarifying requirements contained in 517.207. Additionally, GSA is revising subpart 538.2 for purposes of revising the title of section 538.270 and adding paragraphs (d) (36) and (e) to section 538.273. Lastly, GSA is revising subpart 552.2 to add the following new GSAR clause:

552.238-116, Option to Extend the Term of the FSS Contract. This new GSAR clause incorporates FSS clause, I-FSS-163, Option to Extend the Term of the Contract (Evergreen).

FSS clause I-FSS-163, Option to Extend the Term of the Contract (Evergreen), has been in use by the FSS program since 2000. This clause is currently implemented through internal GSA policy and incorporated into FSS solicitations and contracts. Incorporating this clause into the GSAR allows for greater transparency and ensures FSS regulations are in one area (i.e., part 538).

The internal policy concerning standard fill-in information for paragraph (d) of FAR clause 52.216-22, Indefinite Quantity, has been in use by the FSS program since 2016. The use of standard fill-in information supports the administration of orders issued during the FSS contract ordering period that remain active beyond expiration of the FSS contract ordering period. This requirement is currently implemented through internal GSA policy and incorporated into FSS solicitations and contracts. Incorporating this requirement into the GSAR allows for greater transparency and ensures FSS regulations are in one area (i.e., part 538).

To support the incorporation of these internal GSA policies to the GSAR the following amendments to the GSAR

are being made: the title of section 538.270 is being revised from "Evaluation of Federal Supply Schedule (FSS) offers" to "Solicitation, evaluation and award of Federal Supply Schedule (FSS) contracts"; GSAR clause 552.238-116, Option to Extend the Term of the FSS Contract, is being added (i.e., this clause incorporates and will replace the existing FSS clause I-FSS-163, Option to Extend the Term of the Contract (Evergreen)); adding paragraph (d)(36) to GSAR section 538.273 for purposes of incorporating the prescription for 552.238-116, Option to Extend the Term of the FSS Contract; adding paragraph (e) to GSAR section 538.273 for purposes of incorporating the standard fill-in requirement for paragraph (d) of FAR clause 52.216-22, Indefinite Quantity; and making technical changes to 517.207 for purposes of clarity and conformity.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing

rules, and of promoting flexibility. This rulemaking has been reviewed and determined by Office of Management and Budget (OMB) not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This rulemaking has been reviewed and determined by OMB not to be a "major rule" under 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (GSAR Case 2020-G509), in correspondence.

VII. Paperwork Reduction Act

This rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 517, 538, and 552

Government procurement.

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy,
General Services Administration.

Therefore, GSA proposes amending 48 CFR parts 517, 538, and 552 as set forth below:

1. The authority citation for 48 CFR parts 517, 538, and 552 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c).

PART 517—SPECIAL CONTRACTING METHODS

2. Amend section 517.207 by revising the introductory text and paragraph (a) to read as follows:

517.207 Exercise of options.

In addition to the requirements of FAR 17.207, the contracting officer shall:

(a) Document the contract file with the rationale for exercising the contract option to extend the period of performance if the contractor's performance under the contract is less than satisfactory.

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PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

3. Revise section 538.270 heading to read as follows:

538.270 Solicitation, evaluation, and award of Federal Supply Schedule (FSS) contracts.

4. Amend section 538.273 by adding paragraphs (d) (36) and (e) to read as follows:

538.273 FSS solicitation provisions and contract clauses.

* * * * *

(d) * * *

(36) 552.238-116, Option to Extend the Term of the FSS Contract. Use in all FSS solicitations and contracts.

(e) Insert the following fill-in information within the blank of paragraph (d) of FAR clause 52.216-22, Indefinite Quantity: "the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period".

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 552.238-116 to read as follows:

552.238-116 Option to Extend the Term of the FSS Contract.

As prescribed in 538.273(d)(36), insert the following clause:

OPTION TO EXTEND THE TERM OF THE FSS CONTRACT (DATE)

(a) The Government may require continued performance of this contract for an additional 5 year period. This option may be exercised up to three times.

(b) The Contracting Officer may exercise the option by providing written notice to the Contractor 30 days before the contract expires.

(End of clause)

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